

A Guide to Understanding the “Don’t Ask, Don’t Tell” Policy

Treating soldiers with dignity and respect is a bedrock value for the Army. There is no room for harassment or threats in the military. The Army is determined to implement the "Don't Ask, Don't Tell" Policy with fairness to all concerned. This policy must be clearly understood and fairly enforced.

What Did the Congress Say?

In 1993, Congress made a finding that engaging in, attempting to engage in, or soliciting another to engage in homosexual acts is grounds for discharge from the military. Congress said that military service by those who have demonstrated a propensity to engage in homosexual acts creates an unacceptable risk to morale, good order and discipline, and unit cohesion. Therefore, the long-standing element of military law that prohibits homosexual conduct continues to be necessary in the unique circumstances of military service.

It was the sense of Congress that applicants should not be asked about homosexuality as part of the processing of individuals entering into the Armed Forces in the absence of a determination by the Secretary of Defense that such questions are necessary. Applicants for military service are no longer asked about their sexual orientation.

Army policy is a balance of the legal prohibition of homosexual conduct with the privacy rights of Soldiers.

What Does the Law Say?

United States Code Title 10 addresses homosexuality in the armed services. The code recognizes that one of the most critical elements in combat capability is unit cohesion. The code affirms that the armed forces must maintain personnel policies that exclude persons who would create an unacceptable risk to unit cohesion. Title 10 recognizes that military life is fundamentally different from civilian life and concludes that the presence of individuals in the armed forces who engage in homosexual acts creates an unacceptable risk to unit cohesion and standards of morale, good order and discipline.

What Does “Don’t Ask” mean?

According to Department of Defense and Army policy, a person’s sexual orientation is considered a personal and private matter that is not a bar to military service unless manifested by homosexual conduct. Upon entry into the Army, applicants may not be asked nor required to reveal their sexual orientation. Applicants will not be asked if they have engaged in homosexual conduct. While on Active Duty soldiers will not be asked about their sexual orientation unless there is credible evidence of homosexual conduct.

What does “Don’t Tell” mean?

“Don’t Tell” is the opposite side of the coin from “Don’t Ask”. It means simply that soldiers should not disclose or discuss their sexual orientation or conduct. If a soldier

admits publicly to being a homosexual, the commander will start an informal inquiry or investigation to determine if credible evidence exists to warrant separation.

What Is Not Credible Evidence?

- Rumors that a soldier is homosexual
- Others opinions that a soldier is homosexual
- Going to a homosexual bar, reading homosexual publications, associating with known homosexuals or marching in homosexual rights rally in civilian clothes
- Reporting threats or accusations of being homosexual

What Is Credible Evidence?

- A statement by a reliable person that the soldier has engaged in a homosexual act, heard the soldier state that he or she was homosexual or that the soldier had married or attempted to marry a member of the same sex
- A statement by a reliable person that they had observed or discovered a soldier saying or putting in writing a statement acknowledging a homosexual act or the intent to engage in a homosexual act

What Is Considered Grounds for Investigation?

Commanders can only begin an investigation or fact-finding inquiry if credible evidence of possible homosexual conduct exists. This means that before an investigation begins, a commander must have a reasonable belief that a soldier has:

engaged in a homosexual act;

stated that he or she is a homosexual or otherwise indicate a propensity to engage in homosexual conduct; or

married or attempted to marry a person of the same sex

In most cases, when a soldier freely admits to being a homosexual, investigations are not needed in order for a separation to occur.

How Do Investigations Proceed?

When the commander has credible evidence, he or she initiates an inquiry. Commanders are required to consult with legal advisors prior to initiating any investigation into alleged homosexual conduct.

What Can I do If I Am Threatened or Harassed?

A soldier who feels harassed or threatened for any reason should report the harassment or threat at once to his or her commander.

Under DoD and Army Policy, the fact that a person reports being threatened or harassed because he or she is said or is perceived to be a homosexual shall not, by itself, constitute credible information justifying the initiation of an investigation of the threatened or harassed soldier.

It is Army policy that soldiers can report threats, harassment or violence to the command, free of harm or reprisal. Commanders will take appropriate action to protect the safety of

soldiers who report threats or harassment. Appropriate action should include prompt investigation of the threat or harassment itself.

Threats or harassment based on a soldier's perceived or alleged homosexuality do not, by themselves, constitute credible information justifying an inquiry about possible homosexual conduct by the harassed soldier.

Who Can I Talk With in Confidentiality?

A soldier can discuss any topic regarding sexual orientation with a Legal Assistance Attorney these communications are protected by the attorney-client privilege. The attorney may not disclose the contents of the privileged communication or take any actions, of which the soldier does not approve.

Summary of Current Army Policy.

On 26 July 1999, the Secretary of the Army signed Army Regulation 600-20, entitled Army Command Policy, Chapter 4-19 http://docs.usapa.belvoir.army.mil/jw2/xmldemo/r600_20/head.asp defines the Army's homosexual conduct policy. The policy implements section 654 of Title 10, United States Code and states that suitability to serve in the Army is based on conduct and the ability to meet required standards of duty performance and discipline. Homosexual conduct is defined as an act or a statement by a soldier that demonstrates a propensity or intent to engage in homosexual acts, the solicitation of another to engage in a homosexual act or acts, or a homosexual marriage or attempted marriage.

The challenge to all soldiers is to comply with the law that prohibits homosexual conduct while at the same time respecting the privacy and dignity of every soldier.